IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3245 OF 1997

Swati Padmakar Deshpande,
Residing at C-19,
Government Employees Colony,
Old Thane Naka, Panvel,Raigad.
....Applicant.

Vs.

The State.
(At the instance of Panvel Town
Police Station.)
....Respondent.

Mrs. Rajani Pathak i/by Karim Shaikh and N.S.Pathak for the Applicant.

Mr.K. V. Saste, APP. for the State.

CORAM : R.S. MOHITE,J.
DATED : 30/6/2006.

ORAL JUDGMENT

1. This is an application filed by the applicant for quashing an order dated 15.10.1997 passed by the Asstt. Sessions Judge, Raigad in Sessions Case No.191/1996 rejecting the applicant's application for discharge.

2. The facts of the case are as follows :

. The applicant along with her alleged paramour Vishnu Dattatraya Phadke are facing trial for offence under Section 306 read with 34 of the Indian Penal Code.

The applicant is the wife of the deceased Padmakar Anant Deshpande who committed suicide by hanging himself on or about 4.7.1996. His body was discovered by neighbour by name Vasant. On an F.I.R. by P.S.I. Shinde, crime was registered. The police recorded the statements of three brothers of the deceased Padmakar by names Sharad, Sridhar and Ravindra. The statements of two more persons were also recorded i.e. Vasant and friend of deceased Padmakar by name Barku. Apart from this, four suicide notes dated 1.7.1996 addressed to different persons were also recovered by the police. The second note is addressed to his brother Dada, the third note is addressed to the wife i.e. the present applicant and the fourth note is addressed to his daughter Devashree. On reading the said four notes, it is clear that the deceased had committed suicide because he was fed up with the acts of his wife and the wife's sister Anju. The suicide was committed due to illicit relationship of the present applicant and her alleged paramour on one hand and applicant's sister Anju with her alleged paramour Vidya on the other hand. By the impugned judgment and order the Sessions Court discharged the accused No.3 Anju and her alleged paramour Vidya. On perusing the statements recorded by the police, it is clear that the marriage between the applicant and the deceased took place in the year 1983. In the year 1993 they separated and since then they were staying

separately. The daughter Devashree was staying with the present applicant in Government quarter since the applicant was a Government servant serving in Irrigation Department.

3. In so far as alleged illicit relationship between the applicant and her alleged paramour Phadke except the contents of the suicide notes there is no other material collected by the Investigating Officer. It is true that the statements of brothers of the deceased i.e. Sharad, Shridhar and Ravindra as well as the friend of the deceased Barku talk of the illicit relationship but they have no independent knowledge and they claim to have learnt about the illicit relationship from the deceased himself.

4. The statements of brothers of the deceased by name Ravindra and Shridhar however, clearly indicate that they learnt about the illicit relationship between the applicant and her alleged paramour Phadke from the deceased six months prior to the death of the deceased. It is well settled that the act which amounts to abetment must be proximate to the death. In the present case, it is clear that the deceased had knowledge of the alleged illicit relationship at least six months prior to his committing suicide. In my view, there is no material to warrant a conviction under Section 306 of

the Indian Penal Code. The Advocate for the applicant has relied upon a judgment of the Single Judge of the **Madhya Pradesh High Court in the case of Alka Grewal Vs.State of M.P. reported in 2000 CRI. L.J. 672.** In similar circumstances of a husband committing suicide, leaving a suicide note speaking about immoral character of the wife was held not to be sufficient to infer that wife abetted the act of suicide. In Para 7 it is held that wife might have been a cause for suicide but not an abettor.

5. It can also be seen in the present case that there is no allegation of any proximate act of the present applicant who was staying separately from the deceased for the period of about 3 to 4 years along with her daughter.

6. It may be mentioned here that the alleged paramour Vishnu Phadke-accused No.2 in Sessions Case No. 191/1996 had filed separate application bearing Cri. Application No. 3309/1997. This application was filed by him for quashing the case without making any earlier application for discharge and therefore, without dealing with the case against him on merits, this court had rejected the said application with liberty to file a discharge application before the Sessions Court. It is however, clear that on the finding on merits which are

given in this judgment, no purpose will be served by allowing the Sessions Court to proceed against him alone specially when the case is being dismissed against the present applicant. In the circumstances, rule is made absolute in terms of prayer clause (b) against all the accused.

(R.S. MOHITE, J.)

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DATED : 30/6/2006.

OPERATIVE ORDER

1. For the reasons recorded separately in the judgment, this court passes the following order.

. Rule is made absolute in terms of prayer clause (b) against all the accused.

(R.S. MOHITE, J.)